

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA

v.

BENJAMIN PENA

Defendant.

Case Number 3:09CR858(JAP)-01

*RECEIVED
OCT 16 2012
AT 8:30
WILLIAM T. WALSH M
CLERK*

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, BENJAMIN PENA, was represented by Robert G. Stahl, Esquire (Retained).

The defendant has been found not guilty on count(s) 4 and is discharged as to such count(s).

The defendant was found guilty on count(s) 1,2,3,5,&6 by a jury verdict on 06-23-2010 after a plea of not guilty. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18 U.S.C. SECTION 371	CONSPIRACY TO SUBMIT FALSE STATEMENTS TO THE UNITED STATES	FROM IN OR ABOUT 02-2008 THROUGH IN OR ABOUT 11-2008	ONE
18 U.S.C. SECTION 287	SUBMISSION OF FALSE STATEMENTS TO THE UNITED STATES	ON OR ABOUT 11-2008 THROUGH 12-2008	TWO & THREE
18 U.S.C. SECTION 1341	MAIL FRAUD	ON OR ABOUT 11-2008 THROUGH 01-2009	FIVE & SIX

As pronounced on 10-16-2012, the defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$\$100.00 per count; total: \$500 (due immediately), for count(s) 1,2,3,5,&6, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 16th day of October, 2012.


JOEL A. PISANO
United States District Judge

Defendant: BENJAMIN PENA
Case Number: 3:09CR858(JAP)-01

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 55 Months, on each of counts, 1, 2, 3, 5, and 6 of the Indictment, all terms to run concurrently.

The Court makes the following recommendations to the Bureau of Prisons:

It is recommended that the Bureau of Prisons be made aware of the defendant's hearing impaired medical condition and where he can be accommodated.

Further ordered, that the defendant be designated to a facility, which will abide by the American's with Disability Act.

Further recommended, that the defendant be geographically near his family members.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons at 9:00 a.m. on November 27, 2012.

RETURN

I have executed this Judgment as follows:

At _____ Defendant delivered on _____ To _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: BENJAMIN PENA
Case Number: 3:09CR858(JAP)-01

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years on each count to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

Based on information presented, the defendant is excused from the mandatory drug testing provision, however, may be requested to submit to drug testing during the period of supervision if the probation officer determines a risk of substance abuse.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

LOCATION MONITORING PROGRAM (6 weeks until self-surrender to the Bureau of Prisons) (Payment waived)

You are to participate in the Location Monitoring Program. You shall be confined to your residence for a period of 6 weeks until self-surrender to the Bureau of Prisons commencing at the direction of the U.S. Probation Office. You shall be required to be at this residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs and at other such times as may be specifically authorized by the U.S. Probation Office. You shall wear a Location Monitoring device and follow all location monitoring procedures. You shall permit the Probation Officer access to the residence at all times and maintain a telephone at the residence without any custom services or portable, cordless equipment. You shall comply with any other specific conditions of home confinement as the Court may require. The U.S. Probation Office may use less restrictive location monitoring technology if the U.S. Probation Office determines that a less restrictive device is available and appropriate.

MENTAL HEALTH TREATMENT

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Officer shall supervise your compliance with this condition.

Defendant: BENJAMIN PENA
Case Number: 3:09CR858(JAP)-01

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- (17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);

- (18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge

Defendant: BENJAMIN PENA
Case Number: 3:09CR858(JAP)-01

and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

- (19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;
- (20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

----- For Official Use Only ----- U.S. Probation Office -----

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) _____
Defendant Date

_____ U.S. Probation Officer/Designated Witness Date

Defendant: BENJAMIN PENA
Case Number: 3:09CR858(JAP)-01

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the amount of \$1,280,000.00. The Court will waive the interest requirement in this case. Payments should be made payable to the U.S. Treasury and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for distribution to U.S. Treasury "Jay Keithley", Federal Communications Commission, 445 - 12th Street SW, Washington, DC 20552-0004, Attn: Jay Keithley, Special Assistant OIG. The amount ordered represents the total amount due to the victim for this loss. The defendant's restitution obligation shall not be affected by any restitution payments made by other defendants in this case, except that no further payments shall be required after the sum of the amounts actually paid by all defendants has fully satisfied this loss. The following defendant(s) in the following case(s) may be subject to restitution orders to the same victim for this same loss:

Robert Z. Rubeck	Cr. No.: 09-858-02
Tamara Frankel	Cr. No.: 09-858-03
John Yeh	Cr. No.: 09-856-01
Joseph Yeh	Cr. No.: 09-856-02

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$50, to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: BENJAMIN PENA
Case Number: 3:09CR858(JAP)-01

RESTITUTION AND FORFEITURE

FORFEITURE

The defendant is ordered to forfeit the following property to the United States: \$1,000,000.00.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.